

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA**

	:	
LORI ALLAIN,	:	
	:	
	:	
Plaintiff,	:	
	:	
v.	:	
	:	C.A. No.: <u>2:22-cv-03131-KBH</u>
MARK D. MILLER, individually; and	:	
MARK MILLER CUSTOM	:	
BUILDER ENTERPRISES, LLC,	:	
	:	
Defendants.	:	

PLAINTIFF'S OPPOSITION TO MOTION TO VACATE DEFAULT

Plaintiff, Lori Allain, by and through her undersigned attorneys, files the within Opposition to the Motion of Defendants, *pro se*, to vacate default:

Defendant Miller, *pro se*, seeks to vacate default because, he claims, “I was never served in person, nor was I aware of this issue.” He also argues the claims were frivolous because Plaintiff “claims to be speaking to the Devil + Dead People...”

None of this is grounds to reopen the judgment. Such a motion is governed by Fed.R.Civ.P. 60, which provides, in pertinent part:

Rule 60. Relief from a Judgment or Order

...

(b) **Grounds for Relief from a Final Judgment, Order, or Proceeding.** On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (4) the judgment is void;

- (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- (6) any other reason that justifies relief.

(c) Timing and Effect of the Motion.

- (1) Timing. A motion under Rule 60(b) must be made within a reasonable time—and for reasons (1), (2), and (3) no more than a year after the entry of the judgment or order or the date of the proceeding.
- (2) Effect on Finality. The motion does not affect the judgment's finality or suspend its operation.

Defendants' motion is meritless.

As a preliminary matter, Miller cannot represent his LLC in this Motion as he is not an attorney and cannot represent an LLC *pro se*. See *Dougherty v. Snyder*, 469 F. App'x 71, 72 (3rd Cir. 2012) (*citations, quotation marks in original*):

“It has been the law for the better part of two centuries ... that a corporation may appear in the federal courts only through licensed counsel.” *Rowland v. Cal. Men's Colony*, 506 U.S. 194, 201–02, 113 S.Ct. 716, 121 L.Ed.2d 656 (1993); see also *Simbran, Inc. v. United States*, 367 F.2d 373, 373–74 (3d Cir.1966) (so holding). The same applies to LLCs, even those with only a single member, because even single-member LLCs have a legal identity separate from their members. See *United States v. Hagerman*, 545 F.3d 579, 581–82 (7th Cir.2008); *Lattanzio v. COMTA*, 481 F.3d 137, 140 (2d Cir.2007).

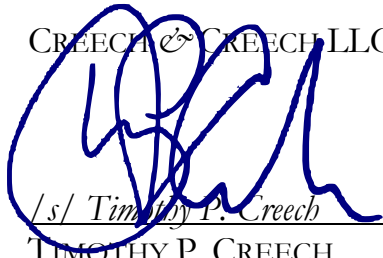
Furthermore, Defendant cannot establish any of the grounds for relief under Rule 60. The motion was not made “within a reasonable time” after entry of the judgment. Defendant clearly had knowledge of the case on April 30, 2023 (*see* Docket #31). (He had notice earlier.) He took no action to remove the judgment until August 2024.

Nothing in his motion justifies any relief. The motion is frivolous and should be dismissed without further discussion.

WHEREFORE, Defendant's Motion should be DENIED and this Court should enter such other relief as it deems just and proper.

Respectfully submitted,

CREECH & CREECH LLC



/s/ Timothy P. Creech

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DATED: September 10, 2024

CERTIFICATE OF SERVICE

Timothy P. Creech, Esq., certifies that he caused a true and correct copy of the foregoing Plaintiff's Opposition to Motion to Vacate Default Judgment to be served *via* email, regular mail, and certified mail, return receipt requested, to the following:

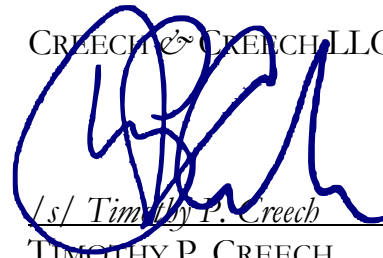
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CREECH & CREECH LLC



/s/ Timothy P. Creech

TIMOTHY P. CREECH

DATED: September 10, 2024